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IN THE

Supreme Court of the United States

October Term, 1963

No. 513

RAYMOND D. BROWN,
Petitioner,

against

DREW CHEMICAL CORPORATION
(formerly E. F. Drew & Co., Inc.),
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Raymond D. Brown,
Petitioner Pro Se,
P. O. Box 236,
Boonton, New Jersey.

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Pursuant to Rules 24(4), 40(4) and 41(3) which govern the procedure for reply briefs filed in this Court, the following reply has been compiled with reference to excerpts from the respondent's brief in opposition to the petition for writ of certiorari served upon the petitioner on October 24, 1963.

POINT I

The respondent pleads:

> "... the petitioner herein originally commenced his action ... to recover damages in the nature of unpaid wages which he claimed were due to him from his employer ... from April 13, 1955, the date of his hiring ..." (Rb 4, par. 2)

> "... notwithstanding the fact that in the complaint itself the petitioner's entitlement to the increment was asserted merely 'as a matter of principle' ..." (Rb 5, par. 1).

C. " * * * the record below is devoid of the suggestion now made by the petitioner that he was required under the 'threat of dismissal' to work for the respondent. This allegation is here raised for the first time * * * " (Rb 5, par. 2).

Petitioner's Reply

Part (4) of the support for the arrearages before dismissal indicates that no wages were lost prior to April 13, 1956 since three raises were received after April 13, 1955, the date of hiring. See R- App. to Pet. pp. 5a-32a. Furthermore, the complaint clearly states that the petitioner was entitled to the higher pay *as a matter of right*, not principle. See R- App. to Pet. pp. 1a-32a. And that he was required to work for the respondent under the threat of dismissal. See R- App. to Pet. pp. 1a-2a, 36-1.

POINT II

The respondent pleads:

A. " * * * the New Jersey courts have judicially determined the petitioner's case on the merits * * * without first requiring him to first present his complaints before the administrative body set up for that purpose by the statute * * * " (Rb 8, par. 2).

B. " * * * the construction of the New Jersey Law Against Discrimination by the courts of that state * * * is controlling here and the decision below is not subject to reversal * * * " (Rb 11, par. 2).

Petitioner's Reply

From the first excerpt it is apparent that the respondent has attempted to exploit the fact that the New Jersey courts docketed the complaint and passed judgment upon the case without first requiring a hearing before the Commissioner of the State Board of Education, and thus

rendered due process of law. However, this merely concerns how the action was handled below, and has no bearing upon whether or not an administrative hearing should afford due process of law, which was the substance of the dispute.

Secondly, it is clearly evident that had the State courts properly decided the issue from the viewpoint of the construction of the Law Against Discrimination, they should have observed that *the law also provided for independent action*, see N. J. S. A. 18:25-27, which along with the argument that the administrative remedy does not guarantee due process of law, forms the basis of the petitioner's defense against the respondent's jurisdictional theory. And considering that the arrearages constitute back pay, under the due process provisions of the State and Federal Constitutions no citizen may arbitrarily be deprived of his property, *Sorensen* v. *Jacobsen* (1951) 232 P. 2d 332, 125 Mont. 148, 26 A. L. R. 2d 1186, which is possible in a quasi-judicial hearing where the application of the rules of evidence is dispensed with.

Furthermore, it should be construed by this Court that since the primary aim of the Law Against Discrimination, N. J. S. A. 18:25-1, *et seq.*, is "An act to protect all persons in their civil rights (and) to prevent and eliminate practices of discrimination against certain persons * * * ", that proving the defendant's motive for an act of discrimination—*especially where no motive was ever claimed*—and proving that the act was done, are essentially two different matters where only the claim made need be proved. From the foregoing, it may be clearly ascertained that the judgment below did not rest upon adequate state grounds, and that this Court has the jurisdiction to review the matter.

POINT III

The respondent pleads:

> A. " * * * a review of the record below discloses that neither the complaint nor any of the pleadings filed in this case below ever intimidated or suggested a plea of violation of the Thirteenth Amendment * * * * " (Rb 14, par. 1).
>
> B. " * * * the petitioner's continued employment with the respondent was a voluntary expression of his own desires and that his assertion of a servitude is without foundation * * * " (Rb 15, par. 1).

Petitioner's Reply

It is stated in the complaint that the respondent's agent, *i.e.* the personnel manager, required that the petitioner work without complaining or face dismissal from the company. See App. to Pet. 1a-2a, 36-1. Although at that stage no plea of involuntary servitude was made, the fact that the pleading does not refer in terms to a federal statute determining the defendant's liability is not controlling as to whether a federal question exists * * *, *Jones National Bank* v. *Yates* (Neb. 1916), 36 S. Ct. 429, 240 U. S. 541, 60 L. Ed. 788. Therefore since the constitutional issue of involuntary servitude has been strongly suggested throughout the action below it should be considered for review on this petition.

With reference to excerpt "B." above, the petitioner replies that the fact he complained of a wrongful dismissal under the statute is not controlling to indicate that he was satisfied with the status quo while in the respondent's service. Furthermore, the reason for the petitioner's continued service, despite the fact that he was working against his will, is explained by the common economic problem created by the necessity to be gainfully employed regardless of any discrepancy in wages. Although it may be stated that the petitioner was able to seek other employment, this would not have solved the problem for which the only solution is to win a decision from this Court.

CONCLUSION

For the reasons hereinbefore set forth in rebuttal of the Respondent's Brief in Opposition, this Court should exercise its discretion and certify the Petition for having presented a substantial federal question.

Respectfully submitted,

RAYMOND D. BROWN,
Petitioner, Pro Se.

Dated: November 7, 1963